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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 JOE J.W. ROBERTS, JR.,

9 Plaintiff,

10 v.

11 SNOHOMISH COUNTY, *et al.*,

12 Defendants.

Case No. C16-1464-TSZ-JPD

ORDER RE: PLAINTIFF'S PENDING
MOTIONS

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14 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before
15 the Court at the present time on plaintiff's motions for leave to amend his complaint, for
16 reconsideration, for an order compelling defendants to release plaintiff's medical records, and for
17 appointment of counsel. Also pending is plaintiff's "motion" notifying the Court of misconduct
18 by the Washington Department of Corrections and requesting relief in the form of appointment
19 of counsel. The Court, having reviewed the pending motions, and the balance of the record,
hereby finds and ORDERS as follows:

20 (1) Plaintiff's motion for leave to amend his complaint (Dkt. 56) is GRANTED in
21 part and DENIED in part. Plaintiff, by way of the instant motion, seeks leave to file a second
22 amended complaint in this action. Plaintiff has submitted a proposed second amended complaint
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1 for the Court's review in which he identifies ten new defendants, and additional claims for relief,
2 including a Public Records Act claim. (*See* Dkt. 56-1.) The proposed new defendants include:
3 Snohomish County Corrections Sergeant Otto; Corrections Deputies E. Moormeier, Chavez,
4 Cook, Ray, Gilfeather, and J. Moormeier; Lt. Stites; Public Records Administrator Beth Taylor;
5 and, Nurse Meader. (*Id.*) Defendants filed a response opposing plaintiff's motion to amend.
6 (Dkt. 57.) However, in their response, defendants specifically object only to the addition of
7 plaintiff's proposed Public Records Act claim and to plaintiff's attempt to join four of the
8 proposed ten new defendants.¹ (*Id.* at 2-3.)

9 Rule 15(a) of the Federal Rules of Civil Procedure provides that the court should freely
10 give leave to amend "when justice so requires." Five factors are typically considered when
11 assessing the propriety of a motion for leave to amend: (1) bad faith; (2) undue delay; (3)
12 prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff has
13 previously amended his complaint. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). At
14 issue in this case is primarily the futility of some of plaintiff's proposed amendments.

15 Defendants argue that the addition of the proposed Public Records Act ("PRA") claim
16 would be futile because the statute of limitations has long since elapsed on the presentation of
17 any such claim. (Dkt. 57 at 2-3.) Defendants argue as well that this Court may not have
18 jurisdiction over this state law matter since the events giving rise to the PRA claim are not the
19 same as the events giving rise to plaintiff's § 1983 claims. (*Id.* at 3.)

22 ¹ Defendants note in their response that there are several additional defects in plaintiff's proposed second
23 amended complaint which are likely to be subject to future motions to dismiss under either Rule 12(b)(6) or Rule
12(c) of the Federal Rules of Civil Procedure, but which they don't seek to exclude here because of the liberal
pleading policy of Rule 15(a)(2) of the Federal Rules of Civil Procedure. (Dkt. 57 at 5.)

1 Plaintiff's PRA claim arises out of Snohomish County's denial of plaintiff's request
2 under the PRA, RCW 42.56, for videos and documents related to his move between units at the
3 Snohomish County Jail on May 8, 2015, the event which gives rise to the excessive force claims
4 asserted in this action. (*See* Dkt. 56-1 at 14-15; Dkt. 58 at 5.) RCW 42.56.550 provides that an
5 action seeking judicial review of an agency's denial of a public records request "must be filed
6 within one year of the agency's claim of exemption[.]" Plaintiff's PRA request was denied by
7 Snohomish County Jail Captain Kevin Young on June 5, 2015. (*See* Dkt. 58 at 5, ¶ 5.6.) It
8 therefore appears clear that plaintiff's PRA claim would be barred by the statute of limitations
9 and, thus, allowing plaintiff to add such a claim to this action would be futile.²

10 Defendants argue as well that adding proposed new defendant Beth Taylor as a defendant
11 would be futile because plaintiff's claim against this defendant is solely related to the PRA claim
12 which is not only barred by the statute of limitations, but is also not sufficiently related to the
13 underlying claims to warrant joinder. (*See* Dkt. 57 at 3-4.) Because it appears clear that
14 plaintiff's PRA claim is barred by the statute of limitations, and because Ms. Taylor is implicated
15 only in that claim, the Court agrees that allowing plaintiff to add Ms. Taylor to this action would
16 also be futile.

17 Defendants argue that plaintiff's attempt to add Captain Daniel Stites to this action is
18 improper because plaintiff fails to explain the legal basis for adding Captain Stites. Plaintiff's
19 only allegation concerning Captain Stites is that plaintiff "asked Stites to preserve all cameras on
20 May 8th 2015." (Dkt. 56-1 at 17.) Plaintiff alleges no facts whatsoever suggesting that Captain
21 Stites personally participated in causing him harm of federal constitutional dimension, a

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23 ² Plaintiff previously attempted to litigate his PRA claim in King County Superior Court, but voluntarily
dismissed that claim on June 16, 2016. (*See* Dkt. 58.)

1 prerequisite to maintaining an action under § 1983. *See Crumpton v. Gates*, 947 F.2d 1418, 1420
2 (9th Cir. 1991) And, to the extent plaintiff might intend to claim that Captain Stites' action
3 violated the PRA, his claim fails for the reasons discussed above with respect to Ms. Taylor.

4 Finally, defendants argue that plaintiff's attempt to add Corrections Deputy ("C/D") Jean
5 Moormeier to this action is improper because plaintiff fails to properly allege a cause of action
6 against this proposed new defendant. (Dkt. 57 at 4.) Plaintiff alleges in his second amended
7 complaint that C/D J. Moormeier "refused to make a statement and was negligent." (Dkt. 56-1 at
8 28.) Plaintiff goes on to allege that C/D J. Moormeier violated Snohomish County policy by
9 failing to report the use of force incident, failing to offer plaintiff medical care, and failing to ask
10 if plaintiff wanted to decontaminate. (*See id.*)

11 A plaintiff's statement of claim must be sufficient to "give the defendant fair notice of
12 what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S.
13 41, 47 (1957). The factual allegations of a complaint must be "enough to raise a right to relief
14 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In
15 addition, a complaint must allege facts to state a claim for relief that is plausible on its face.
16 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff's claim against C/D J. Moormeier is vague
17 and conclusory and lacks any specific facts demonstrating that this individual personally
18 participated in causing plaintiff harm of federal constitutional dimension. Plaintiff has therefore
19 failed to adequately allege a cause of action against C/D J. Moormeier.

20 For the foregoing reasons, plaintiff's motion for leave to file a second amended complaint
21 is denied with respect to plaintiff's PRA claim, and with respect to the claims asserted against
22 proposed defendants Beth Taylor, Daniel Stites, and Jean Mooremeier. Plaintiff's motion for
23 leave to file a second amended complaint is granted in all other respects. Accordingly, the Clerk

1 is directed to file plaintiff's second amended complaint. The Court will issue in conjunction with
2 this Order an Order directing service of plaintiff's second amended complaint on the seven new
3 defendants against whom plaintiff will be permitted to proceed.

4 (2) In light of the fact that plaintiff has been granted leave to amend his complaint,
5 and that service on new defendants will be necessary, the previous pretrial deadlines established
6 by the Court (*see* Dkt. 51) are STRICKEN, and will be re-set once the new defendants have been
7 served and an answer to plaintiff's second amended complaint has been filed.

8 (3) Plaintiff's motion for reconsideration (Dkt. 55) is DENIED. It is not entirely
9 clear from a review of plaintiff's motion what the intent of the document is. It appears that
10 plaintiff is attempting to challenge arguments made by defendants in their response to plaintiff's
11 multiple motions regarding the Washington Department of Corrections ("DOC") and
12 appointment of legal counsel (*see* Dkt. 48), as plaintiff asks the Court to reject defendants'
13 arguments and grant his motions. Assuming this is the purpose of plaintiff's motion for
14 reconsideration, plaintiff's motion is moot because the Court has already ruled on the motions at
15 issue.

16 To the extent plaintiff may be seeking reconsideration of the Court's ruling addressing
17 his prior motions, he has shown no basis for relief. The Court, in its Order of March 14, 2017,
18 denied a series of motions filed by plaintiff complaining about alleged misconduct on the part of
19 the DOC and requesting that counsel be appointed to represent him in this matter. (Dkt. 51.)
20 The Court advised plaintiff that it had no authority to direct the actions of the DOC because the
21 DOC is not a party to this action. (*Id.* at 3.) With respect to plaintiff's requests for appointment
22 of counsel, the Court noted that it had previously denied a similar request and that plaintiff had
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1 yet to demonstrate exceptional circumstances which would justify the appointment of counsel.
2 (Dkt. 51 at 3-4.)

3 The Court will ordinarily deny motions for reconsideration “in the absence of a showing
4 of manifest error in the prior ruling or a showing of new facts or legal authority which could not
5 have been brought to its attention earlier with reasonable diligence.” LCR 7(h)(1). Plaintiff has
6 not demonstrated any error in the Court’s prior ruling. While the Court recognizes that there are
7 challenges associated with attempting to litigate an action from the confines of a correctional
8 facility, such challenges are an insufficient reason to appoint counsel. Plaintiff has shown ample
9 ability to litigate this action without the assistance of counsel and, thus, any motion to reconsider
10 the denial of such an appointment must be denied.

11 (4) Plaintiff’s motion for an order compelling defendants to release his medical
12 records (Dkt. 53) is DENIED. In his first set of interrogatories and requests for production,
13 plaintiff asked that defendants produce his medical records from the Snohomish County Jail.
14 (*See* Dkt. 46-1 at 8.) Plaintiff asserts in his motion to compel that defendants objected to this
15 request for production. (Dkt. 53 at 1.) The Federal Rules of Civil Procedure and the Local Rules
16 of this Court require that a party seeking to compel discovery include in the motion a
17 certification that the moving party “has in good faith conferred or attempted to confer” with the
18 party failing to make disclosures. *See* Fed. R. Civ. P. 37(a)(1); LCR 37(a)(1). Plaintiff’s motion
19 to compel does not include the requisite certification and the motion must therefore be denied.

20 (5) Plaintiff’s motion for appointment of counsel (Dkt. 50) and plaintiff’s “motion”
21 notifying the Court of DOC misconduct and requesting relief in the form of appointment of
22 counsel (Dkt. 52) are STRICKEN as moot. The Court has recently addressed these issues (*see*
23 Dkt. 51), and sees no need to do so again at this juncture.

(6) The Clerk is directed to send copies of this Order to plaintiff, to counsel for defendants, and to the Honorable Thomas S. Zilly.

DATED this 4th day of May, 2017.

James P. Donohue
 JAMES P. DONOHUE
 Chief United States Magistrate Judge